

RP583

**REPUBLIC OF KENYA**

**WATER SUPPLY AND SANITATION SERVICE IMPROVEMENT PROJECT  
(Wassip)**

**PROPOSED FOLLOW-UP ON CAPITAL INVESTMENT PROGRAM**

**RESETTLEMENT POLICY FRAMEWORK (RPF)**

**REVISED JULY 2007**

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## LIST OF ACRONYMS

ARAP		Abbreviated Resettlement Action Plan
AWSB		Athi Water Supply Board
CWSB		Coast Water Supply Board
DPs		Displaced Persons
ESMF	:	Environmental and Social Management Framework
GOK		Government of Kenya
LG		Local Government
LGI		Local Development Institution
LVNWSB		Lake Victoria North Water Supply Board
NEMA	:	National Environmental Management Authority
NGO	:	Non Governmental Organization
OP	:	Operational Policy
PAPs	:	Project Affected persons(s)
RAP	:	Resettlement Action Plan
RPF	:	Resettlement Policy Framework
WB	:	World Bank
WSP		Water Service Provider

## DEFINITION OF TERMS USED IN THE REPORT

Unless the context dictates otherwise, the following terms shall have the following meanings:

**“Census”** means a field survey carried out to identify and determine the number of Project Affected Persons (PAP) or Displaced Persons (DPs). The meaning of the word shall also embrace the criteria for eligibility for compensation, resettlement and other measures emanating from consultations with affected communities.

**Project Affected Person(s) (PAPs)** are persons affected by land use or acquisition needs of the Water Supply, Sanitation and Liquid Waste Disposal program. These person(s) are affected because they may lose, be denied, or be restricted access to economic assets; lose shelter, income sources, or means of livelihood. These persons are affected whether or not they must move to another location.

**“Compensation”** means the payment in kind, cash or other assets given in exchange for the acquisition of land including fixed assets thereon.

**“Cut-off date”** is the date of commencement of the census of PAPs or DPs within the project area boundaries. This is the date on and beyond which any person whose land is occupied for project use, will not be eligible for compensation.

**“Displaced Persons”** mean persons who, for reasons due to involuntary acquisition or voluntary contribution of their land and other assets under the project, will suffer direct economic and or social adverse impacts, regardless of whether or not the said Displaced Persons are physically relocated. These people will have their: standard of living adversely affected, whether or not the Displaced Person must move to another location ; lose right, title, interest in any house, land (including premises, agricultural and grazing land) or any other fixed or movable assets acquired or possessed, lose access to productive assets or any means of livelihood.

**“Involuntary Displacement”** means the involuntary acquisition of land resulting in direct or indirect economic and social impacts caused by: Loss of benefits from use of such land; relocation or loss of shelter; loss of assets or access to assets; or loss of income sources or means of livelihood, whether or not the Displaced Persons has moved to another location; or not.

**”Involuntary Land Acquisition”** is the repossession of land by government or other government agencies for compensation, for the purposes of a public project against the will of the landowner. The landowner may be left with the right to negotiate the amount of compensation proposed. This includes land or assets for which the owner enjoys uncontested customary rights.

**“Land”** refers to agricultural and/or non-agricultural land and any structures thereon whether temporary or permanent and which may be required for the Project.

**”Land acquisition”** means the repossession of or alienation of land, buildings or other assets thereon for purposes of the Project.

**Rehabilitation Assistance”** means the provision of development assistance in addition to Compensation such as land preparation, credit facilities, training, or job opportunities, needed to enable Displaced Persons to improve their living standards, income earning capacity and production levels; or at least maintain them at pre-Project levels.

**Resettlement and Compensation Plan”, also known as a “Resettlement Action Plan (RAP)” or “Resettlement Plan”** - is a resettlement instrument (document) to be prepared when program locations are identified. In such cases, land acquisition leads to physical displacement of persons, and/or loss of shelter, and /or loss of livelihoods and/or loss, denial or restriction of access to economic resources. RAPs are prepared by the party impacting on the people and their livelihoods. RAPS contain specific and legal binding requirements to resettle and compensate the affected party before implementation of the project activities.

**”Replacement cost”** means replacement of assets with an amount sufficient to cover full cost of lost assets and related transaction costs. The cost is to be based on **Market rate (commercial rate)** according to Kenyan law for sale of land or property. In terms of land, this may be categorized as follows; (a) **”Replacement cost for agricultural land”** means the pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the costs of: (b) preparing the land to levels similar to those of the affected land; and (c) any registration and transfer taxes;

**”Replacement cost for houses and other structures”** means the prevailing cost of replacing affected structures, in an area and of the quality similar to or better than that of the affected structures. Such costs shall include: (a) transporting building materials to the construction site; (b) any labor and contractors’ fees; and (c) any registration costs.

**”Resettlement Assistance”** means the measures to ensure that Displaced Persons who may require to be physically relocated are provided with assistance during relocation, such as moving allowances, residential housing or rentals which ever is feasible and as required, for ease of resettlement.

**”The Resettlement Policy Framework (RPF)”** has been prepared as an instrument to be used throughout the Water, Sanitation and Liquid Waste Disposal program implementation. The RPF will be disclosed to set out the resettlement and compensation policy, organizational arrangements and design criteria to be applied to meet the needs of the people who may be affected by the program. The **Resettlement Action Plans (“RAPs”)** for the program will be prepared in conformity with the provisions of this RPF.

# Resettlement Policy Framework

## Executive Summary

### 1. INTRODUCTION

This Water Supply and Sanitation Service Project falls within the framework of Kenya's country assistance strategy. The national policy framework endorses the importance of key sectors such as water supply, sanitation and liquid waste disposal, health, agriculture and other social sectors as crucial to the attainment of the goals set out in the national policy.

Kenya's development options have gone through various mutations over the years in response to changing conditions and requirements of its population as well as the international context.

In this regard and in order to render the policy functional, a strategic water supply and sanitation plan had to be developed based on the improvement/rehabilitation and extension of these services through the Water Boards and Water Supply Providers created for this purpose and to provide support to these structures to enable them to initiate, plan and implement programs in infrastructure to enhance the processes of sustainable development.

### 2. DESCRIPTION OF THE PROJECT

#### Project development objective and key indicators

The development objectives of the project are to: **(a)** increase access to reliable, affordable and sustainable water supply and sanitation services; and **(b)** to improve the water and wastewater services in the areas served by Athi Water Services Board (AWSB), Lake Victoria North Water Services Board (LVNWSB), and Coast Water Services Board (CWSB). This will be achieved by **(i)** rehabilitating selected existing water production, transmission, storage and distribution facilities and wastewater collection, treatment and disposal facilities, **(ii)** expanding piped water supply services to under-served areas through the extension of primary and secondary distribution pipes where required (this would include service expansion into urban slums / informal settlements through a balanced program including the involvement of communities in decision making), and **(iii)** refining and strengthening the institutional structure, emphasizing on increasing accountability and transparency of the institutional and governance and management framework.

#### Project Components

The project would have three major components: (1) support to the Athi Water Services Board (including technical assistance support to the Water Sector Regulatory Board and the Water Appeals Board), (2) support to the Coast Water Services Board, and (3) Support to the Lake Victoria North Water Services Board. These are summarized below. Within each component, there are two main subcomponents for water and sewerage infrastructure rehabilitation and expansion are focused on increasing the access of safe water and sanitation services to the beneficiaries. A further subcomponent of institutional strengthening of WSBs is focused on the quality, reliability, affordability and sustainability service provision to beneficiaries and the long term viability and sustainability of service provision institutions.

**Component 1.** Support to the Athi Water Services Board (including technical assistance support to the Water Sector Regulatory Board and the Water Appeals Board). This will include:

- (a) the rehabilitation of existing water supply systems including transmission pipelines, water

treatment works, storage, water distribution networks, boreholes; construction of water treatment works in selected small towns, and extension of water distribution networks and metering,

(b) the rehabilitation of sewerage networks and sewage treatment facilities, and extension of existing networks,

(c) supporting selected equipment and activities aimed at strengthening the commercial, financial and technical operations at AWSB and water services providers, technical assistance for M&E, engineering, financial, legal, assets valuation, audits, informal settlements WSS program, communications, environmental and safeguards, and independent assessments of the institutional framework; programs to increase oversight and transparency of service delivery; and training and capacity building,

(d) supporting the operationalization and strengthening of the Water Sector Regulatory Board (WSRB) and the Water Appeals Board (WAB).

**Component 2.** Support to the Coast Water Services Board. This will include:

(a) the rehabilitation of existing water supply systems including transmission pipelines, water treatment works, storage, water distribution networks, boreholes; construction of water treatment works in selected small towns, and extension of water distribution networks and metering,

(b) the rehabilitation of sewerage networks and sewage treatment facilities, and extension of existing networks,

(c) supporting selected equipment and activities aimed at strengthening the commercial, financial and technical operations at CWSB and water services providers, technical assistance for M&E, engineering, financial, legal, assets valuation, audits, informal settlements WSS program, communications, environmental and safeguards, and independent assessments of the institutional framework; programs to increase oversight and transparency of service delivery; and training and capacity building.

**Component 3.** Support to the Lake Victoria North Water Services Board. This will include:

(a) the rehabilitation of existing water supply systems including transmission pipelines, water treatment works, storage, water distribution networks, boreholes; construction of water treatment works in selected small towns, and extension of water distribution networks and metering,

(b) the rehabilitation of sewerage networks and sewage treatment facilities, and extension of existing networks, the construction of sewerage systems in selected small towns (of less than 2,500m<sup>3</sup>/d each); on-plot sanitation; and hygiene campaigns.

(c) supporting selected equipment and activities aimed at strengthening the commercial, financial and technical operations at LVNWSB and water services providers, technical assistance for M&E, engineering, financial, legal, assets valuation, audits, informal settlements WSS program, communications, environmental and safeguards, and independent assessments of the institutional framework; programs to increase oversight and transparency of service delivery; and training and capacity building.

### **3. INSTITUTIONAL AND LEGAL FRAMEWORK.**

#### **3.1 Institutional Framework**

The institutional framework for management of this program is as contained in detail in the Environmental



and Social Management Framework document. The different levels of local government and their responsibilities in program planning, design, implementation and monitoring are clearly identified.

### **3.2 Legal Framework**

Land tenure systems in Kenya

There are different types of land tenure systems in Kenya namely:

- state or public,
- Customary,
- Freehold,
- Leasehold, all embodied in various acts specified in the main RPF.

The land tenure system has recently been the subject of an in-depth review and a draft Land Law has now been presented for debate by Kenyan stakeholders.

The consultant has had the opportunity to peruse the proposals and has found no proposals in opposition to the World Bank policies contained in OP.4.12 on resettlement.

## **4. OBJECTIVES AND BASIC TERMS OF PREPARATION OF THE RPF**

The framework document is designed to enable Water Boards, WSPs, local government institutions, communities and the bank to address the needs of the populations that could be affected by the program by establishing policies, principles, institutional arrangements for management of issues related to dislocation of persons and livelihoods. The legislation on resettlement of the government of Kenya and the norms of the World Bank in its OP 4.12 will be the instruments that will govern any resettlement issues arising out of the activities of the program.

## **5. IMPACTS, LAND AQUISITION AND RESETTLEMENT**

Any resettlement of populations will engender:

- loss of land ;
- loss of housing or commercial business ,
- loss of economic resources or employment,
- Marginalisation of the population concerned ,
- a degradation of health standards or increased morbidity,
- loss of access to natural resources,
- disarticulation or disturbance of way of life of affected population,
- Food shortages.

Acquisition of Land

The Water Boards, WSPs and local government authorities as well as local communities are vested with the authority to:

- identify the scope of the program,
- screen the projects as to their potential environmental, social, economic impacts as well as their potential to cause resettlement and it's corollaries,
- Specify the zones of installation or siting of the projects.

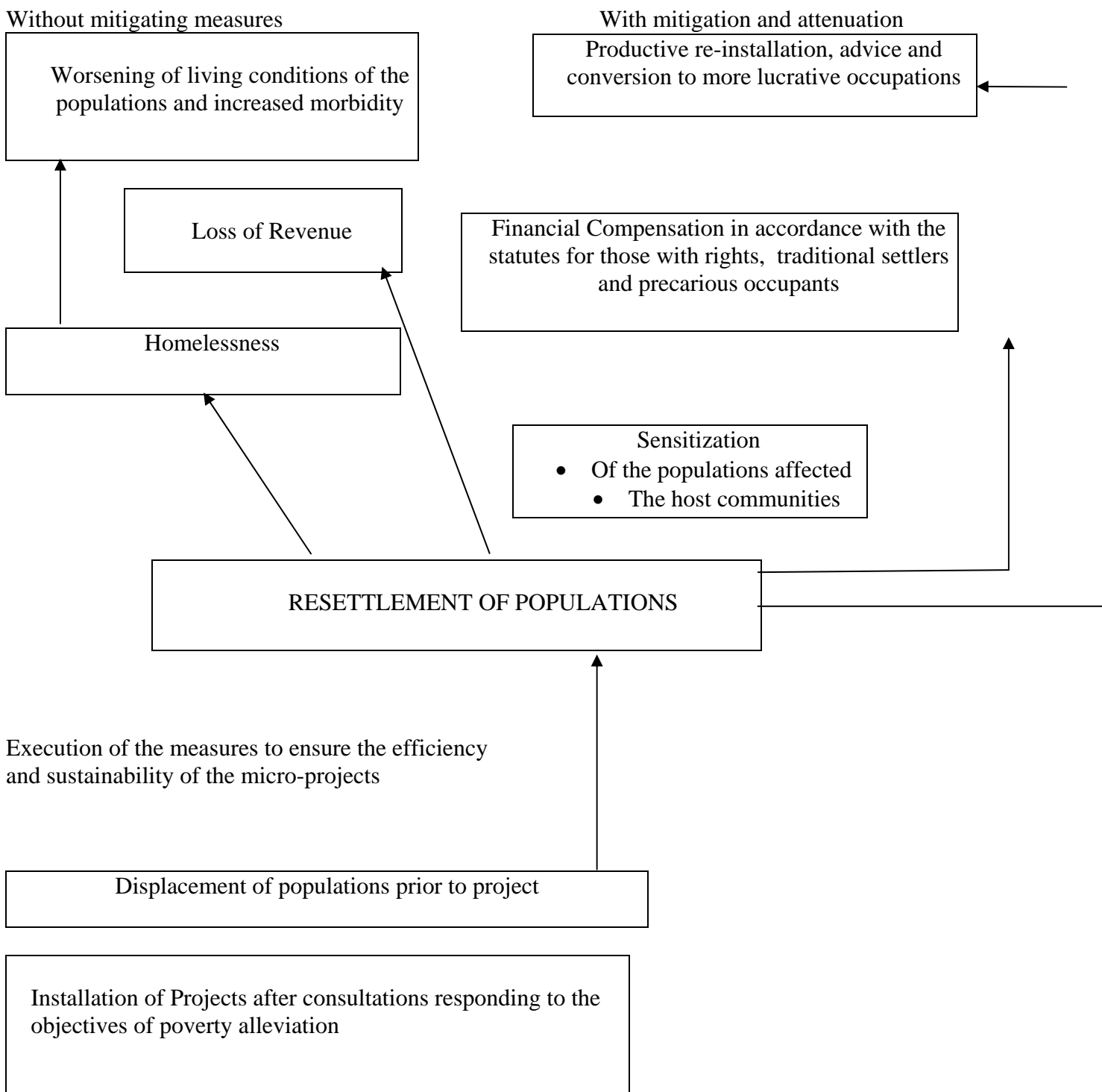
The Kenya Government, in its various acts, and the World Bank in OP 4.12 stipulate clearly that any land needed for a project can be repossessed from the existing user if equivalent land can be allocated to the

category of persons concerned. The land must have the same productive capacity if not better than the original land. No other prejudice, whether economic or moral must be suffered by the displaced entity.

**Chart No. 1 Resettlement Impacts and Mitigation**

**Creation of poverty**

**Creation of a productive momentum**



During the various discussions with Water Boards WSPs as well as some local communities, the consultant noted the consensus amongst all the actors that the option of resettlement of populations will be avoided to the extent possible but that some loss of land or loss of access may occur in some cases, notably in some urban and peri-urban and rural areas.

Several mitigating measures should be implemented by the project and the communities in the event of

physical population re-location as well as the losses that such relocation will generate, namely:

- relocate the people affected to housing equivalent to those they left,
- reallocate land equivalent if not better than their land re-possessed,
- intensification of the methods of production and diversification of their produce or revenue generating activities outside their lands,
- Use of the resources created by the project to improve productivity.

For those who may lose employment:

- creation of cottage industries and revenue generating activities,
- promotion of husbandry of small ruminants,
- Promotion of fish farming, weaving, dyeing and other intensive income generators.

The displaced persons must not suffer any prejudice with regard to access to natural resources and services such as education, water, sanitation, health and other facilities.

The displaced persons, whether individuals, families or communities with certain affinities must be assisted by the program and the communities to reconstruct their livelihoods without any form of alienation, in particular by the host communities.

## **6. PRINCIPLES AND OBJECTIVES GOVERNING RESETTLEMENT PREPARATION AND IMPLEMENTATION**

Displacement zero for the populations and loss of assets or access to resources of any community is the guiding principle of the program.

Any displacement of persons or assets, loss of access to natural resources and services must be covered by compensation and attenuation of all impacts due to re-installation to an appropriate site.

## **7. RESETTLEMENT ACTION PLAN PREPARATION (RAP), REVIEW AND APPROVAL**

The RAPs must reflect faithfully the prescriptions of the RPF in the program's infrastructure programme where resettlement or loss of assets (land in particular) is expected to occur.

It has been the experience of the consultant, through participation in several siting boards, that urban and peri-urban zone and land-stressed districts will present the most difficult elements for consideration in the formulation of the RAPs.

A thorough screening process must therefore be adopted in this regard incorporating environmental and social considerations as well as access to services (water and sanitation, health and transport etc).

Water Boards, WSPs and LGIs should be equipped to carry out the screening exercise, undertake the processes and mechanisms for land acquisition and relocation as embodied in the land acts of Kenya and world bank policies before, as a final resort, invoking the use of the judicial processes of litigation.

A matrix of the elements of the screening exercise is shown below.

In cases where no physical relocation of persons takes place, the matrix should bring this out clearly. Where only land is to be acquired, the RAP could take the form of a description of how the acquisition is to be carried out. In the case of loss of assets, the types of compensation, the values and the categories of persons affected will be specified in the RAP.

## **8. ESTIMATED POPULATION DISPLACEMENT AND CATEGORIES OF AFFECTED PEOPLE**

The consultant could not at this stage do an estimation of the number of affected persons. The matrix in annex will bring this out for each project and detailed in the RAP.

## **9. LEGAL FRAMEWORK FOR RESETTLEMENT**

It is important to note that the customary land tenure system that prevailed prior to the independence of Kenya is still valid.

The present laws recognise also:

- the national or state domain,
- the freehold domain,
- the lease hold domain,
- Customary tenure.

There are also various acts and codes in place notably pertaining to:

- forests,
- agriculture,
- mining,
- water,
- Physical planning.
- Public health

However the right of use of the land and the right of way to natural resources, e.g water is recognised and presents no conflicts as far as implementation of the program is concerned.

The forest codes/acts appear, according to certain reports to be posing major problems in reconciling land use, forest conservation measures and major investment programs under consideration by the government.

The mining code may pose problems in certain districts given the discovery of certain resources in certain parts of the country.

The Water Supply and Sanitation projects could be spared any conflicts by implementing the provisions of the ESMF and this RPF.

The communities may have to be protected immediately from land speculators by setting cut-off date/s on land acquisition, particularly in high-value resource-endowed areas.

The various laws of Kenya and other provisions of the constitution recognise the right to compensation for loss of land and assets for all categories of persons as embodied in the World Bank OP 4.12. All the categories of persons including non-title deed holders, encroachers and illegal occupants/squatters.

## **10. ELIGIBILITY CRITERIA FOR VARIOUS CATEGORIES OF AFFECTED PEOPLE**

To be eligible for compensation for all the categories cited in the paragraph above, one must have:

- property right over a defined area through a title deed
- right of use over a defined area and that the right is exercised accordingly and recognised as such,
- Possession of the area hitherto unused as for example, encroachers and illegal occupants/squatters.

As regards the latter, under Kenyan law, though not entitled to compensation, they should however be resettled in accordance with the prescriptions of this RPF

Any loss of water rights or access should be compensated as well by providing the access and services as shown in the matrices in annex.

In order to avoid opportunistic invasion of any project location area, the best cut-off date for compensation should be the date on which an inventory of the site condition begins.

## **11. METHODS OF VALUING AFFECTED ASSETS**

In Kenya, the method of valuing assets is based on the principle of the “market value”

Expropriation or de-allocation of land will result in the payment of compensation calculated on the basis of this value and on the date the asset/land being declared as public utility. The indemnity or compensation can be fixed amicably or through legal procedures and will apply to:

- title to the land or right to it's use,
- title rights or other rights to structures constructed,
- Non-corporal elements of commercial funds.

In all cases the value of the compensation is estimated at the current market value plus the added value or on the basis of the declared value to the fiscal authorities.

For non-corporal commercial losses, the level of compensation cannot be less than the real benefits over the last year declared to the fiscal authorities prior to the cut-off date for compensation.

These methods of valuing assets appear cumbersome compared to the World Bank norms which are based on the restoration of the assets without depreciation.

As to access to services, clients, suppliers, natural resources which are difficult to evaluate, the Bank tends towards the provision of equivalent sources of revenue that are also culturally acceptable.

## **12. ORGANISATIONAL ELEMENTS AND PROCEDURES FOR DELIVERY OF ENTITLEMENTS, INCLUDING THE RESPONSIBILITY OF EACH ACTOR**

The first principle is that the compensation is prior to and total before commencement of any projects. As a prelude, the prejudice caused must be identified. This identification can be carried out by the Water Boards, WSPs or Local Authorities co-opting where necessary:

- legitimate representatives of the affected people including women, children the disabled,
- population specialists (legal experts on displacements of people and laws on land tenure, rural economists, sociologists and population specialists),
- representatives from Ministries concerned as, including in this case Local Government and Lands.

This committee should as a priority publicise the location of the project in question, indicating the potential impacts with reference to resettlement or re-installation or loss of assets or access.

The prejudices caused will then be verified in consultation with the affected persons, validated and the nature and scope of any compensation specified in the RAP.

**13. GENERIC ASPECTS OF THE IMPLEMENTATION SCHEDULE, INCLUDING HOW RESETTLEMENT WILL BE LINKED TO THE PROJECT**

The implementation schedule for all the project is part of the tasks of water Boards, WSPs and LGIs. They, in consultation with the committee on resettlement will incorporate all start-up dates for civil works into their schedule with the proviso that no works will commence until full compensation has been effected.

**14. GRIEVANCE REDRESS MECHANISMS.**

Grievances can usually be redressed depending on the level and the scope of the consultations carried out within the impacted communities before and during the identification of the projects as well as their siting. Once a consensus is obtained on these it generally easy to avoid grievances arising over the consequences of the project as alternatives and compensatory and attenuating measures related to re-installation of persons or assets would have been adequately debated. The use of the community structures and affinities provides therefore the first and best forum for the redress of grievances.

If this mechanism fails to function, the persons affected have in general resorted to arbitration at the level of higher LG authorities who can, in certain cases take administrative decisions.

The affected people can, under all circumstances resort to a legal process for the redress of their grievances. The process can be long and not easily accessible in particular to rural communities.

**15. BUDGET AND FUNDING ARRANGEMENTS**

It must be noted that throughout the mission, no case of physical relocation of persons was evident.

As to funding arrangement for cases of this nature, the financing can be either in the overall budget of the project or to provide compensation in the form of revenue generating activities.

However because of the problems of predicting at this stage the nature and scope of resettlement and or issues related to it, loss of assets or access to resources and services, to cite only these and the difficulties that could be encountered in accessing funds for compensation, co-opting specialised expertise for resettlement issues (cited above) and other payments, given budgetary and regulatory/fiscal policies in Kenya, the consultant proposes a rolling Advanced Lending Program to cater for any such eventualities.

**With \$US 400,000 per Board/year the outlay proposed is-----\$US4, 800,000**

The budgeting for each of the projects is therefore the appropriate moment to insert all costs pertaining to any potential resettlement or loss of assets.

**16. METHODS FOR CONSULTING WITH AND PARTICIPATION OF AFFECTED PEOPLE**

The consultant found that the whole spectrum of projects to be retained will be the subject of intense discussions with the local communities as beneficiaries and likely to be affected in one way or the other. The consensus to-date is that physical relocation of people is unlikely but possible as stated earlier. Loss of agricultural assets may not be avoidable.

It was confirmed by the Water Boards and WSPs and the communities encountered that the consultation process is permanent from the conception of projects to their localisation. It was evident that no project was retained against the will of the communities visited.

This RPF will be circulated to the communities through the offices of the Water Boards, WSPs and different levels of LGIs and will be the subject of discussions at community level in order to ensure that safeguard policies embodied in the RPF are respected.

Any re-installation of persons or assets shall be specified in the matrices contained in the RPF and which should be reflected in all RAPs required for each project. The RAPs themselves will be prepared after consultations with all stakeholders, particularly with beneficiaries and those persons likely to be affected.

## **17. MONITORING ARRANGEMENTS**

Monitoring will be carried out by the Water Boards, WSPs and LGIs in place as contained in ESMF. The screening processes stipulated in the latter and the roles and responsibilities thereof in implementation and monitoring are equally valid for this RPF

The tables or matrices contained in this RPF should adequately assist in focusing the work of the resettlement committees and local monitors where appointed for this purpose.

In the event of the need for relocation of persons, loss of assets, loss of access to resources and services, the tables in the main report and in annex to this summary will be sufficient for the preparation of the RAPs where these are called for.

Tables 1 and 2 shows the questions to be answered on the need for relocation and the basic mitigation or attenuation measures required for the displaced persons and their environment at the new re-installation site.

Table 3 should cover the categories of persons that could be affected, the nature of the prejudice caused and should be extended to show the level of compensation due as well as the measures expected to attenuate the hardships engendered by the displacement.

## **18. CONCLUSIONS**

Although the brief of the consultant is to prepare an RPF, it is relevant to state that, at first examination of the spectrum of project activities that will be retained by the program and the prevailing methods of consultations with the communities, there is little or no likelihood of any physical and involuntary displacement of people.

The most likely impact of the project is the loss of land for which the communities have adopted consensual mechanisms to avoid any prejudice for any loss to persons and to adequately compensate for such loss.

The communities and the program should agree that no project will commence prior to compensation of those entitled and without economic or moral prejudice to those affected.

## **19. RECOMMENDATIONS**

- a) The creation of ad-hoc committees comprising Water Board Officials, WSPs, and LGIs with specialists on issues of resettlement, rural economies, the DPs or PAPS is recommended.
- b) Prior sensitisation of the communities at the level of conception of the projects will enable them to understand and readily adhere to it's execution with all its implications better understood. The technical committees should, on formation immediately commit themselves to this task.
- c) The training of the community and village cadres should be re-enforced to enable them to better participate in screening of the projects as to their consequences.
- d) The committees could initiate preliminary socio-economic analyses to assist all communities on matters relating to land tenure, resettlement or re-installation of assets. The Water Boards and WSPs and LGIs could provide the resources for all the training requirements.



- e) Grievance redress mechanism at village and community level based on consensus should be the rule to be adopted.
- f) In the event that, in any province/district or other LG area of Kenya, any physical relocation of persons is deemed necessary, the sites for relocation must be provided with all the services required for their health, education, recreation, shelter and economically viable land for their well-being. All mitigating and attenuating measures, including all compensation for losses must be effected prior to displacement.
- g) Monitoring of the project implementation and auditing after execution should be systematic.

**Table No. 1 : Matrix for Evaluation of the Impacts of the Project**

<b>Water Boards, WSPs and LG Community</b>	1.2. PROJECT			
<b>A. Element</b>	<b>Yes</b>	<b>No</b>	<b>result</b>	<b>Mitigation and attenuation</b>
The Project does it entail; <ul style="list-style-type: none"> <li>a) the re-installation of populations,</li> <li>b) the loss of land,</li> <li>c) the loss of structures                         <ul style="list-style-type: none"> <li>• for housing,</li> <li>• for commercial use,</li> </ul> </li> <li>d) the loss of access to:                         <ul style="list-style-type: none"> <li>• natural resources,</li> <li>• health facilities,</li> <li>• water and sanitation</li> <li>• energy.</li> </ul> </li> <li>e) loss of revenue,</li> <li>f) any Marginalisation</li> <li>g) increased morbidity</li> <li>h) disruption of family and community values,</li> <li>i) disruption of socio-cultural or cult values</li> </ul>				

**Table No. 2: Potential Impacts at New Re-Installation Site**

Water Boards/WSPs and LG Community		Project		
Item.	yes	No	Result	Mitigation/attenuation
1. Re-housing necessary?				
2. What persons are affected?				
3. Are there any loss of agricultural land, parks, loss of trees?				
4. Is the new site difficult to access or subject to inundation?				
5. Does the new site improve mobility of the populations?				
6. Is solid waste generated? Is there an appropriate disposal site?				
7. Is liquid waste generated? Is there an appropriate disposal system?				
8. Is there an adequate sanitation system in place?				
9. Is any soil erosion likely to occur? Are the drainage systems adequate?				
10. Are groundwater resources likely to be polluted?				
11. Is their likelihood of negative impacts on the health of the displaced persons?				
12. Is there a plan for the maintenance of the site?				

**Table No. 3: Specimen Entitlement Matrix**

CATEGORY OF PAP	TYPE OF LOSS	ENTITLEMENTS				
		Compensation for Loss of Structures	Compensation for Loss of Assets	Compensation for Loss of Income	Moving Allowance	Other Assistance
Property Owners	Loss of land	–	Land replacement at new site, plus land clearing by project	Crops at market cost in scarce season	None	Food Aid during construction of new site
	Loss of structure, Residential or for business	Compensation at full replacement value not depreciated	Fences (wire or wood) at \$ /meter, Hand-dug wells at \$	For lost rental income Lump sum cash payment of 6 months rent per tenant	Moving to be done free by project	Disturbance Allowance
Residential Tenant	Loss of rental accommodation	No loss of structure, no entitlement to housing at new site	Replacement cost for non-movables if installation was agreed with owner	No loss of income	Free relocation if notification before cut-off date	6 months rent equivalent for disturbance
Business Tenant	Loss of premises	No loss	Replacement cost for facilities that cannot be moved	For loss of business income, payment of half of turnover for 6 months	Free relocation if notification before cut-off date	
Encroachers (using land)	Loss of land	–	Relocation to resettlement site of choice, with payment of rental fee for land. For crops, fences and wells, as above for owners	–	–	Food Aid during preparation and construction of new site

Illegal /bona fide occupants/ (living on site)	Loss of shelter	Compensation at full replacement value for structure, relocation to resettlement site, with payment of site rent until completion of relocation	None	Payments in lieu of wages while rebuilding		Disturbance Allowance

# MAIN REPORT

## RESETTLEMENT POLICY FRAMEWORK

### 1. INTRODUCTION

#### 1.1 BACKGROUND

The Government of Kenya's Poverty Reduction Strategy Papers included detailed assessments of key issues of services required in alleviating factors that contribute to eliminating poverty in the country. It noted that despite being on the increase in urban areas, poverty remains predominantly a rural phenomenon. Income poverty and poor access to water and sanitation and other social services are pervasive, resulting in reduced opportunities for human and economic development. Rural communities are particularly hard hit by poverty, due to lack of access to appropriate development resources apart from narrow agricultural-based livelihood systems. Among the critical interventions discussed in the PRSP and the recent concept note which, amongst other issues dwelt on water and sanitation needs to enhance and diversify the level of development and service delivery throughout the country and to expand this to elements of the population, notably, the poor, the female gender and those who hitherto, had not had access to water resources and sanitation facilities for self-development irrespective of age or origins.

The Government of the Republic of Kenya with World Bank support, is preparing a program whose components are described below.

To ensure that these investments are carried out in an environmentally and socially sustainable manner, the project developed the present Resettlement Policy Framework (RPF). An Environmental and Social Management Framework (ESMF) has been prepared separately.

The objective of this RPF is to provide a legal framework and a screening process for future investment activities. As the exact scope of the investments could not be identified prior to appraisal, the Resettlement Policy Framework (RPF) has been prepared as an instrument to be used throughout the implementation of the investments. The RPF, on disclosure and approval will specify the legal instruments applicable to resettlement and compensation and organizational arrangements required for application of the policy framework.

#### 1.2 PROJECT OBJECTIVES AND KEY INDICATORS

The development objectives of the project are to: *(a)* increase access to reliable, affordable and sustainable water supply and sanitation services; and *(b)* to improve the water and wastewater services in the areas served by Athi Water Services Board (AWSB), Lake Victoria North Water Services Board (LVNWSB), and Coast Water Services Board (CWSB). This will be achieved by *(i)* rehabilitating selected existing water production, transmission, storage and distribution facilities and wastewater collection, treatment and disposal facilities, *(ii)* expanding piped water supply services to under-served areas through the extension of primary and secondary distribution pipes where required (this would include service expansion into urban slums / informal settlements through a balanced program including the involvement of communities in decision making), and *(iii)* refining and strengthening the institutional structure, emphasizing on increasing accountability and transparency of the institutional and governance and management framework.

## **Project Components**

The project will have three major components: (1) support to the Athi Water Services Board (including technical assistance support to the Water Sector Regulatory Board and the Water Appeals Board), (2) support to the Coast Water Services Board, and (3) Support to the Lake Victoria North Water Services Board. These are summarized below. Within each component, there are two main subcomponents for water and sewerage infrastructure rehabilitation and expansion that are focused on increasing the access of safe water and sanitation services to the beneficiaries. A further subcomponent of institutional strengthening of WSBs is focused on the quality, reliability, affordability and sustainability service provision to beneficiaries and the long term viability and sustainability of service provision institutions.

**Component 1.** Support to the Athi Water Services Board (including technical assistance support to the Water Sector Regulatory Board and the Water Appeals Board). This will include:

(a) the rehabilitation of existing water supply systems including transmission pipelines, water treatment works, storage, water distribution networks, boreholes; construction of water treatment works in selected small towns, and extension of water distribution networks and metering,

(b) the rehabilitation of sewerage networks and sewage treatment facilities, and extension of existing networks,

(c) supporting selected equipment and activities aimed at strengthening the commercial, financial and technical operations at AWSB and water services providers, technical assistance for M&E, engineering, financial, legal, assets valuation, audits, informal settlements WSS program, communications, environmental and safeguards, and independent assessments of the institutional framework; programs to increase oversight and transparency of service delivery; and training and capacity building,

(d) supporting the operationalization and strengthening of the Water Sector Regulatory Board (WSRB) and the Water Appeals Board (WAB).

**Component 2.** Support to the Coast Water Services Board. This will include:

(a) the rehabilitation of existing water supply systems including transmission pipelines, water treatment works, storage, water distribution networks, boreholes; construction of water treatment works in selected small towns, and extension of water distribution networks and metering,

(b) the rehabilitation of sewerage networks and sewage treatment facilities, and extension of existing networks,

(c) supporting selected equipment and activities aimed at strengthening the commercial, financial and technical operations at CWSB and water services providers, technical assistance for M&E, engineering, financial, legal, assets valuation, audits, informal settlements WSS program, communications, environmental and safeguards, and independent assessments of the institutional framework; programs to increase oversight and transparency of service delivery; and training and capacity building.

**Component 3.** Support to the Lake Victoria North Water Services Board. This will include:

(a) the rehabilitation of existing water supply systems including transmission pipelines, water treatment works, storage, water distribution networks, boreholes; construction of water treatment works in selected small towns, and extension of water distribution networks and metering,

(b) the rehabilitation of sewerage networks and sewage treatment facilities, and extension of existing networks, the construction of sewerage systems in selected small towns (of less than 2,500m<sup>3</sup>/d each); on-plot sanitation; and hygiene campaigns.

(c) supporting selected equipment and activities aimed at strengthening the commercial, financial and technical operations at LVNWSB and water services providers, technical assistance for M&E, engineering, financial, legal, assets valuation, audits, informal settlements WSS program, communications, environmental and safeguards, and independent assessments of the institutional framework; programs to increase oversight and transparency of service delivery; and training and capacity building.

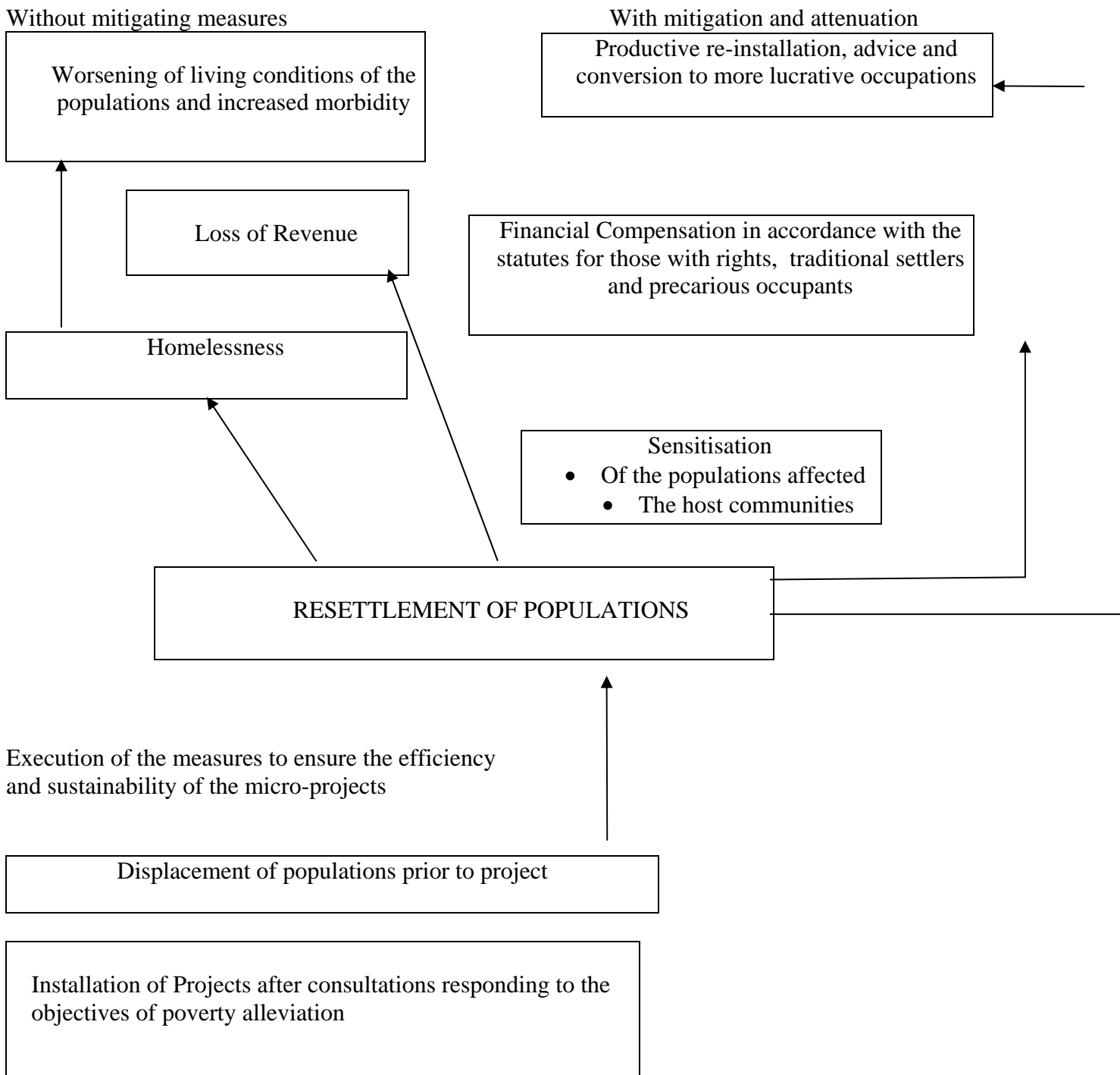
### 1.3. Environmental and social considerations for the project Activities

#### Involuntary Resettlement

**Chart No. 1 Resettlement Impacts and Mitigation**

#### Creation of poverty

#### Creation of a productive momentum





Unmitigated involuntary resettlement arising from development projects often leads to severe economic, social and environmental impacts where:

- production systems are dismantled,
- people face impoverishment if their productive assets or income sources are lost,
- people are relocated to environments where their community institutions and social networks are weakened,
- kin groups are dispersed, and cultural identity, traditional authority and the potential for mutual help are diminished or lost.

More important for this RPF, new projects, whose location and technical specifications are not known at the moment, are planned for future implementation.

An environmental and social management framework has been prepared in order to pre-empt and mitigate adverse environmental and social impacts of the Water Supply, Sanitation and Liquid Waste Disposal infrastructure and socio-economic investment program.

In discussions with project personnel of the Water Boards and WSPs and local government and lands authorities as well as some community leaders, it became evident that, insofar as land acquisition is concerned the prevailing atmosphere has been one of dialogue within and between communities, the local government authorities.

The prevailing tendency has been the competition between communities to offer voluntarily land in order to attract the projects irrespective of any other considerations.

This dialogue and this voluntary acquisition of land is normally carried out firstly at community level any compensation process is usually undertaken within the community through this dialogue.

This method of land acquisition will, it is certain continue in the future but, as a word of caution, the offsprings of the elders in the communities, in particular the expatriate elements are beginning to question the rights of their elders to voluntarily give up land in this manner whatever the utility of the land for their communities or the public at large.

It is evident therefore, in order to avoid any future litigation and in the case of voluntary land acquisition, the consultation process with the communities takes in as broad a spectrum of the communities (including youths and women).

The Resettlement Policy Framework serves to provide safeguards against severe adverse impacts of proposed project activities and proposes mitigation against potential impoverishment risks by:

- avoiding displacement of people in the first place or,
- minimizing the number of Displaced Persons or,
- adequately compensating the displaced persons for losses incurred or.
- adequately addressing adverse impacts of the intended interventions.

## Categories of losses and their impacts on displaced persons

Loss Category	Social Impacts
Relocation	Impoverishment, disturbance of production systems, loss of sources of income, loss or weakening of community systems and social networks, loss of access to social amenities such as hospitals and schools, water; dispersion of kin groups, loss of cultural identity and traditional authority, loss or reduction of potential for mutual help, emotional stress.
Loss of land but no relocation	Impoverishment, loss of sources of income and means of livelihood, loss of assets or access to assets, increased time to access resources
Alienation due to neighbors being relocated	Impoverishment, weakening of community systems and social networks, loss of mutual help and community support, loss of traditional authority, loss of identity and cultural survival, emotional stress
PAPs and host communities	Impoverishment, loss of sources of income, reduced time and access to resources such as hospitals and schools, water, increased time to access resources, disruption of social fabric, increased crime, increase in diseases such as HIV/AIDS, clash of cultural and religious beliefs and cultural norms.

### 1.4 BASIS AND FORMAT OF THE RESETTLEMENT POLICY FRAMEWORK

Consultation during the study revealed that the Departments for Lands and Physical Planning have been involved at the national level in resettlement and compensation issues where evaluations have been done by multi-sector committees comprising representation from Housing, Health, Education, Local Government, Agriculture, Energy and Lands authorities. It was learnt that in their payment for compensation. A pricing index for a variety of assets, unavailable to the consultant, frequently revised or up-dated was and is still used in these evaluations.

This Resettlement Policy Framework (RPF), to be used for screening of projects in the program has been prepared following the results of the findings from the above and other field investigations. Interviews with local people and officials from various Departments of State, Local Government Offices, Private Sector; and information from some previous studies, reports and documents have been used in preparing this framework. The framework establishes parameters for the conduct of land acquisition and compensation including resettlement of displaced persons (DPs), who may be affected during implementation of the Water Supply and Sanitation investment activities, particularly for infrastructure through agricultural land and other areas of socio-economic activities and conflict zones as well as land through cattle tracks, fire breaks and roads to cite only these.

The screening process developed in this framework is consistent with the Bank's safeguard operational policy OP 4.12, for Involuntary Resettlement. This policy requires that all Bank-financed operations are screened for potential impacts, and that the required compensation work is carried out on the basis of the screening results. The framework therefore, while adopting and adapting some of the local experiences and the provisions of local legislation, is based on the World Bank's Operational Policy (OP 4.12) on involuntary resettlement, which emphasizes the following principles:

- Avoiding or minimizing involuntary land acquisition and resettlement, where feasible and exploring all viable alternatives before resorting to involuntary resettlement.
- Where involuntary resettlement and land acquisition is unavoidable, assistance and sufficient resources should be provided to the displaced persons with the view to maintaining and/or improving their standards of living, earning capacities and production levels.

- Encouraging community participation in planning and implementing land acquisition, compensation and/or resettlement, and provision of assistance to affected people regardless of the legality of their land rights or their title to land.

### **Format of the Resettlement Policy Framework (RPF)**

The Resettlement Policy Framework is presented in the following manner:

- Chapter 1 provides a brief background of the project related to the poverty in communities in Kenya. The chapter presents the intentions the Government and the World Bank to address the problems. The Water and Sanitation objectives and components are described and the environmental and social considerations (including the RPF and the ESMF) for the project activities are introduced.
- Chapter 2 gives the objectives and justification for preparing the RPF, highlighting among other issues, the objectives to address the hardships that could arise from land acquisition and resettlement of people to accommodate the Water Sanitation activities. The justification for preparing the RPF is provided in the legal provisions of Kenyan Land Law and other relevant national legislation as well as the World Bank's OP4.12.
- In Chapter 3 Land Administration including land ownership and land tenure systems in Kenya are given. The Chapter also gives the likely categories of affected persons that include ordinary households, individuals and disadvantaged persons.
- Chapter 4 introduces the screening process and outlines the steps leading to the preparation of the Resettlement Action Plans, the RAPs
- Chapter 5 deals with land acquisition mechanisms for the project activities. It further proposes mechanisms for acquisition of all types including voluntary and involuntary types of land acquisition. The Chapter gives details of information and records to be kept for land acquisition activities.
- Chapter 6 deals with the eligibility and conditions for compensating project affected persons by first high-lighting the World Bank's OP4.12 provisions for eligibility for compensation, resettlement and rehabilitation assistance. The chapter continues with procedures for payment of compensation and makes a comparison, where discerned between the World Bank and Kenyan law regarding compensation. Finally the Chapter gives conditions to be followed in displacement of people
- Chapter 7 outlines procedures for notifying the public about intentions to acquire land earmarked for projects. The Chapter also gives procedures for the valuation of assets and calculation of compensation payments.
- Chapter 8 provides procedures for delivery of compensation, emphasizing the need for public consultation and public participation, notification of land resources holders and documentation of land holding and assets as important aspects. The Chapter provides a procedure for addressing complaints and grievances. Finally the chapter emphasizes the importance of signing compensation agreements and the need for transparency and ensuring the presence and participation of all parties concerned when making compensation payments.
- Chapter 9 gives the budgetary implications and the funding mechanisms,
- Chapter 10 gives the institutional and implementation arrangements, highlighting the roles of each of the institutions in the overall implementation of the compensation and resettlement plan. The chapter further highlights the land acquisition and resettlement process that includes the preparation of resettlement plans, the importance of public consultation and participation in all the activities, the importance of observing key time-frames and the importance of linking resettlement implementation to the civil works.
- Chapter 11 provides for land acquisition and resettlement, implementation and monitoring plans. The Chapter provides formats for resettlement management plan and monitoring plan.

## **2. OBJECTIVES AND JUSTIFICATION OF THE RPF**

### **2.1 OBJECTIVES OF THE RPF**

Involuntary resettlement arising from development projects often gives rise to severe economic, social and environmental hardships. The hardships stem from the following reasons among others:

- disruption of production systems,
- affected persons skills being rendered inapplicable in new environments,
- increased competition for resources,
- weakening of community and social networks,
- dispersion of kin groups
- loss of cultural identity and traditional authority and
- loss of mutual help

In most cases, resettlement of people to pave way for development projects is done because the project activities demand land acquisition. Little attention, if any, is given to the welfare of the people affected. The people may be affected because of loss of agricultural land, loss of buildings, loss of access or proximity to water, health and social amenities. Annex 2.1 gives details of categories of losses and their impacts on Displaced Persons.

The objective of this Resettlement Policy Framework (RPF) is to provide a screening process, for any future Water and Sanitation project activities, to ensure that where land acquisition for project activities is inevitable, resettlement and compensation processes for lost land and associated assets should be conceived and executed in a sustainable manner. This entails providing sufficient investment resources to meet the needs of the persons affected and/or displaced from their habitat and resources. It also requires adequate collaborative consultation and agreement with the project affected persons to ensure that they maintain or improve their livelihoods and standards of living in the new environment.

The Resettlement Policy Framework provides guidelines for development of appropriate mitigation and compensation measures, for the impacts caused by future project activities whose exact locations are not known prior to project appraisal. The RPF is intended for use as a practical tool to guide the preparation of Resettlement Action Plans (RAPs) for sub-project activities during implementation of the Project.

### **2.2 JUSTIFICATION FOR THE RPF**

The Water and Sanitation Project's expected investment activities are not likely to result in the relocation of people except perhaps, in the case of water distribution networks or sewerage disposal infrastructure in the highly urbanized or land-stressed areas where loss of land and access to economic resources are distinct possibilities given the prevailing customary land tenure system and the land speculation activities now prevalent in these urban and peri-urban areas.

This framework therefore is necessary to provide guidelines for addressing concerns of affected persons where:

- land is contributed voluntarily for the development project activities in return for compensation,
- land is contributed voluntarily for development project activities without seeking compensation, and
- land is acquired involuntarily for the development of project activities.

The guiding principle for land acquisition shall be that where land is required for implementation of the investment program, appropriate safeguards shall be observed to avoid or reduce the negative impacts of land acquisition on the affected community members.

This framework shall be used on all project sites with the in-built mechanisms for resolving any forms of disputes on land acquisition. The framework shall also be used for all other sector projects irrespective of the funding agency. The RPF is presented in a much more comprehensive manner so as to guide and ensure that all conditions of population dislocation or loss of socio-economic benefits are taken into account during formulation of the RAPs.

## **2.3 LEGAL FRAMEWORK**

### **LAND TENURE SYSTEMS IN KENYA**

Interests in land in Kenya broadly fall into two groups.

Rights and that are held through traditional African systems, and rights that derive from the English system introduced and maintained through laws enacted by colonial and then the national parliament. The former is loosely known as customary tenure bound through traditional rules (customary law). The latter body of law is referred to as statutory tenure, secured and expressed through national law, in various Act of parliament e.g. Government Land Act (cap 280), Registered Land Act (cap 300), Registration of Titles Act (cap 281), Trust Land Act (cap 288) of the Laws of Kenya.)

#### **Customary Land Tenure**

This refers to unwritten land ownership practices by certain communities under customary law. Kenya being a diverse country in terms of its ethnic composition has multiple customary tenure systems, which vary mainly due to different agricultural practices, climatic conditions and cultural practices. However most customary tenure systems exhibit number of similar characteristics as follows:

First, individuals or groups by virtue of their membership in some social unit of production or political community have guaranteed rights of access to land and other natural resources. Individuals or families thus claim property rights by virtue of their affiliation to the group.

#### **Freehold Tenure**

This tenure confers the greatest interest in land called absolute right of ownership or possession of land for an indefinite period of time, or in perpetuity. Freehold land is governed by the Registered Land Act (RLA) Cap 300 of the Laws of Kenya. The Act provides that the registration of a person as the proprietor of the land vests in that person the absolute ownership of that land together with all rights, privileges relating thereto. A freehold title generally has no restriction as to the use and occupation but in practice there are conditional freeholds, which restrict the use for say agricultural or ranching purposes only. Land individualization was demanded by the colonial settlers who required legal guarantee for the private ownership of land without which they were reluctant to invest.

#### **Leasehold Tenure**

Leasehold is an interest in land for a definite term of years and may be granted by a freeholder usually subject to the payment of a fee or rent and is subject also to certain conditions which must be observed. e.g. relating to developments and usage.

Leases are also granted by the government for government land, the local authorities for trust land and by individuals or organizations owning freehold land. The maximum term of government leases granted in Kenya is 999 years for agricultural land and 99 years for urban plots. There are few cases of 33 years leases granted by government in respect of urban trust lands. The local authorities have granted leases for 50 and 30 years as appropriate.

#### **Public Tenure**

This is where land owned by the Government for her own purpose and which includes unutilized or unalienated government land reserved for future use by the Government itself or may be available to the

general public for various uses. The land is administered under the Government lands Act Cap 280. These lands are vested in the president and who has, normally through the Commissioner of Lands, powers to allocate or make grants of any estates, interests or rights in or over un-alienated government land. Categories of government land include forest reserves, other government reserves, alienated and un-alienated government land, national parks, townships and other urban centers and open water bodies'. The Government Lands Act does not contain any notion of trusteeship by government of the land to her people.

### Public Trust Doctrine:

Notwithstanding the fore-going, it is a common law doctrine to the effect that **common property resources such as rivers, forests and parks are held by the state in trust for the general public.** Consequently, the state **cannot alienate these resources or use them in a way detrimental to public interest.** This is the doctrine that would ensure that **public land** cannot be **alienated or committed to waste to the detriment of public interest.**

It is the case that **the statutory framework for land ownership in Kenya is heavily influenced by common law jurisprudence** on land ownership-the owner's rights include the rights of use and abuse.

In Kenya however, the development of physical planning legislation has vested in the state the cumulative rights of other land owners. The regulatory power is referred to as police power.

### Police Powers:-

Under the **Agriculture Act** the Minister has the right to **prohibit cultivation of the land and felling of trees.** If the minister exercised all the powers then the owners of agricultural land would not be able to pursue productive use of the land.

Within the Kenyan context police power is spread a wide range of statutes:

- ◆ Agriculture Act Cap 118
- ◆ Public Health Act Cap 214
- ◆ Local Government Act Cap 261
- ◆ Physical Planning Act Cap 286
- ◆ Environmental Management and Coordination Act 199
- ◆ Forests Act Cap 385
- ◆ Wildlife Conservation and Management Act.

The extent of the exercise of police power varies across these statutes.

In the end the Physical Planning Act provides a framework for physical planning and development control as cited briefly below.

The Forest Act, Wildlife Conservation and Management Act provide for the creation of protected areas. Protected areas are areas within which the predominant land use takes the form of a complete ban on the exercise of private rights.

**EMINENT DOMAIN:** This is the common law theory that the Government is the ultimate owner of all property. The government can acquire property for the public good. Compulsory acquisition has been used for en

Other Acts of relevance to this framework document are:

Mining Act

All unextracted minerals (other than common minerals) under or upon any land are vested in the Government, subject to any rights in respect thereof which, by or under this Act or any other written law, have been or are granted, or recognized as being vested, in any other person

Mineral in this Act, does not include clay, murrum, limestone, sandstone or other stone or such other common mineral substances as the Minister may by notice in the Gazette declare not to be minerals for the purposes of this Act.

#### Physical Planning Act

It deals with all matters relating to preparation of all kinds of physical development plans and subdivisions. It stipulates development control measures and the role of the District and liaison committees. The power of physical planning is concentrated in the office of the director. The Act provides an opportunity of entrusting or empowering the Physical Planners to carry out all planning issues on all categories of land. It also deals with planning problems between boundaries of two Local Authorities, and the creation of Municipal and District Planning liaison committees that encourage involvement of varied expertise in planning.

#### The Forests Act 2005

Gazetted forest land is reserved using the Forest Act 2005. Under the Forest Act, a piece of forest land can be degazetted and converted to other uses. However, the Forest Act requires all de-gazettement of forest land to be discussed and approved by Parliament following preparation of a comprehensive EIA Report. All degazetted land then reverts to the Commissioner of Lands who then proceeds to allocate the land in accordance with the Land Control Act. Under the Forest Act 2005, forest land can also be leased for use for other purposes provided that such use does not contradict conservation goals. The same act also allows for Participatory Management of Forests and thus guarantees communities rights to access and utilize certain forest goods and services including citing of water supply intake works in forest areas.

#### The Public Health Act Cap 242

The Public Health Act regulates activities detrimental to human health. The owner of the premises responsible for environmental nuisances such as noise and emissions, at levels that can affect human health, are liable to prosecution under this act. An environmental nuisance is defined in the act as one that causes danger, discomfort or annoyance to the local inhabitants or that is hazardous to human health.

The consultant, in reviewing all these Acts found that they re-enforce the provisions embodied in the ESMF as well as the RPF in environmental management and land use in Kenya

The Resettlement Policy Framework also draws its strength from local legal instruments that exist in Kenya, specifically the Land Acquisition and Compensation Policies recognize, among others:

- the acquisition of the right of land use and benefit by customary occupancy in good faith,
- the acquisition of the right of land use and benefit through the official channels
- the rules governing protected zones,
- the relationship between the public and the land authorities, and
- the rights and obligations of title holders.

#### 2.4 WORLD BANK POLICIES

The World Bank's Safeguard Policy OP 4.12 applies to some components of the program and to all economically and /or physically project-displaced persons, regardless of the number of people affected, the severity of impacts and the legality of land holding. Particular attention should be given to the needs of vulnerable groups especially those below the poverty line, the landless, the elderly, women and children, indigenous groups, ethnic minorities and other disadvantaged persons.

The Bank's Policy requires that the provision of compensation and other assistance to Project Affected Persons is carried out prior to the displacement of people. In particular, repossession of land for project activities may take place only after compensation has been paid. Resettlement sites, new homes and related infrastructure, public services and moving allowances must be provided to the affected persons in accordance with the provisions of the Bank's policies and incorporated into all Resettlement Action Plans.

The policy encourages participation of the affected persons in the planning and preparation of Resettlement Action Plans. It also offers the impacted persons an opportunity to improve their living standards.

### Comparison of Kenyan Law and World Bank Op 4.12 Regarding Compensation

Category of PAPs and Type of Lost Assets	Kenyan Law	World Bank OP4.12
Land Owners	Cash compensation based upon market value under statute. Land for Land	Recommends land-for-land compensation. Other compensation is at replacement cost.
Land Tenants	Entitled to compensation based on the amount of rights they hold upon land under relevant laws. Illegal tenants not entitled to compensation	PAPS are entitled to some form of compensation whatever the legal/illegal recognition of their occupancy.
Land Users	-In some cases land users have some form of secured tenure extended to them under new laws. In other cases land users are not entitled to compensation for land. -Entitled to compensation for crops and any other economic assets. -Land for Land	Entitled to compensation for crops, may be entitled to replacement land and income must be restored to at least pre-project levels.
Owners of Temporary Buildings	Cash compensation based on market value or entitled to new housing on authorized land under government (state or local) housing programs.	Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement.
Owners of Permanent buildings	Cash Compensation is based on market value.	Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement.
Perennial Crops	Cash compensation based upon rates calculated as an average net agricultural income.	As per specifications of this RPF, once approved by the Bank and disclosed at the Bank info shop,



### **3. LAND ADMINISTRATION AND CATEGORIES OF AFFECTED PERSONS**

#### **3.1 JURISDICTION OF THE FRAMEWORK**

In implementing this framework, the following will apply:

- all land acquisition, including voluntary land contribution will be compensated,
- compensation shall be limited to valuations made after the cut-off date.
- compensation for existing infrastructure shall be limited to new land acquired for extensions and rehabilitation of these infrastructures and related services,
- all land conflicts shall be resolved in a transparent manner and in a manner that is not coercive. Attempts shall be made to resolve conflicts at the village, traditional authority or district level. Where this is not possible, recourse can be had at State legal institutions on land ownership in Kenya.

#### **3.2 General Land Acquisition, Title, Transfer and Term of Ownership**

Land acquisition in Kenya may be achieved through:

- occupancy by individual persons and by local communities, in accordance with customary norms and practices, which do not contradict the Constitution,
- uninterrupted occupancy by individual nationals who have been using the land in good faith,
- authorization on the basis of an application submitted by an individual or corporate person in the manner established by the Land Law on immatriculation.

The Land Law stipulates that a land title shall be issued by the Lands Department. However, the absence of title shall not prejudice the right of land use and benefit acquired through occupancy. The application for land title shall include a statement by the local administrative authorities, preceded by consultation with the respective communities, for the purpose of confirming that the area is free and has no occupants. Title to local community land shall be issued in a name decided upon by the community and individual men and women who are members of the local community may request individual titles after partitioning community land.

The right of land use and benefit can be proved by presentation of the respective title; testimonial proof presented by members, men and women of local communities and by expert evidence and other means permitted by law.

Among other modes of land transfer, the Land Law permits the transfer of land by inheritance, without distinction by gender. The right of land use is not subject to time limit for the following cases: (i) Where the right was acquired by local communities through occupancy; (ii) Where it is intended for personal residential purposes and; (iii) Where individual nationals intend it for family use.

#### **3.3 Likely Number and Categories of Affected Persons**

At the time of doing this study, details and extent of the projects' activities that will take place were not known. Hence the likely numbers of persons who may be affected and displaced during implementation of the Water Supply and Sanitation project activities could not be accurately estimated. However, the Project Affected Persons (PAP's) or the persons likely to be displaced economically or physically can generally be categorized into the following main groups:

##### **Affected Households**

A household will be affected if one or more of its members are affected by the Project activities. This will be either in the form of loss of property, land or access to services or socio-economic resources.

Affected household members will include:

- any member of the household whether men, women, children, dependent relatives, friends and tenants,
- vulnerable individuals who may be too old or ill to farm or perform any duties with the others,
- members of the household who are not residents because of cultural rules, but depend on one another for their livelihood,
- members of the household who may not eat together but provide house keeping or reproductive services, critical to the family's maintenance,
- other vulnerable people who cannot participate, for physical or cultural reasons; in production, consumption, or co-residence.
- disabled people who may be attached to a particular service center.

In general, the local families live in farm families that co-reside sharing production, consumption and domestic farming services on a regular and continuous basis. However, compensation should not be limited to people living together to the exclusion of those who may not be in residence with the rest of the family, for reasons such as polygamy.

The categories given above may not cover all types of affected persons. In addition, the categories are not mutually exclusive. It is important therefore that the Water and Sanitation project activities should have well prepared and comprehensive resettlement action plans that would be specific and comprehensive enough to benefit all the categories of affected persons, through the following and other actions as may be appropriate:

- quick decisions and rapid action on the RAPs' to assist the affected persons in a timely manner,
  - individual and collective consultations should be expedited at the conception of the project locations,
  - the affected persons should be given the opportunity to participate or to work in the project activities,
  - alternative subsistence farming plots should be identified, surveyed and developed and made available to those losing land,
  - compensation for loss of crops and trees should be determined prior to re-location or construction and paid accordingly,
  - rehabilitation support, where appropriate, should be given to those moved from their land during relocation and re-establishment,
  - resettlement should be aimed at improving their livelihoods,
  - monitoring of the RAP's to ensure that resettlement and compensation has improved the quality of life of all the affected persons , in comparison with their pre-resettlement conditions and,
- technical and financial assistance should be made available to them should they wish to use the grievance mechanism stipulated below.

#### **4. STEPS TO BE FOLLOWED IN LAND ACQUISITION AND RESETTLEMENT FOR THE WATER SUPPLY INVESTMENT ACTIVITIES**

Implementation of the program investment activities, particularly the infrastructure and related services may include provision of safe water and sanitation facilities to schools, health centres,markets and to communities as well as the expansion/protection /rehabilitation of these existing structures. These activities may require land acquisition, leading to people's denial or restriction of access to land resources, services and social amenities. In this case, resettlement action plans, consistent with OP 4.12 and the resettlement policy framework, must be prepared.

##### **4.1 The screening process**

Once the list of Water and Sanitation activities is known, the process for land acquisition and resettlement must start with the screening process embodied in the ESMF (identification and analysis) of possible and alternative sites for project implementation.

During screening and indeed during all the other planning and preparatory activities, there must be adequate consultation and involvement of the local communities and the affected persons. Specifically, the

affected persons must be informed about the intentions to use the earmarked sites for the projects. The affected persons must be made aware of:

- a. their options and rights pertaining to resettlement.
- b. specific technically and economically feasible options and alternatives for resettlement sites.
- c. proposed dates for displacement or land repossession.
- d. effective compensation rates at full replacement costs for loss of assets and services
- e. proposed measures and costs to maintain or improve their living standards.

#### 4.2 STEPS LEADING TO PREPARATION OF THE RESETTLEMENT ACTION PLAN

The screening process is a very important component of several activities that contribute to the preparation of the Resettlement Action Plans (RAPs). Preparation and submission of the Resettlement Action Plan to the relevant Water Boards or WSPs comprises the following steps:

- **Step 1:** The project investment activities to be undertaken and the locations of the investments will undergo preliminary evaluation on the basis of the objectives of the project.
- **Step 2:** The WSPs will approach the communities impacted through the local government authorities with the view to arriving at a consensus on possible sites for the type of facility to be adopted.
- **Step 3:** The Local Communities authorities will undertake their inter-communal consultations in order to arrive at a possible siting of the facility.
- **Step 4:** The environmental and social screening process will be carried out in conformity with the provisions of the ESMF and the RPF screening process as contained in table nos. 1 and 2 in this framework document.

The process will determine:

- whether any resettlement will be required at the chosen site and if so whether alternative sites are available,
  - whether any loss of land, assets or access to economic resources will occur or,
  - whether any of the world bank operational policies will be triggered.
- **Step 5:** On the basis of analysis of the matrix emanating from the two screening processes a final selection of the optimum site presenting the least negative environmental and social impacts including resettlement /loss of assets can be made.
  - **Step 6:** Where resettlement or loss of assets cannot be avoided, the provisions of the World Bank's OP 4.12 will be applied.

From this point, the provisions of this RPF will be utilised up to payment of the compensation package including resettlement support where appropriate.

The costs associated with this resettlement or relocation will be included in the RAPs for all the investments.

#### 4.3 Public Consultation and Participation

Projects involving the community owe their success to community participation and involvement from planning to implementation. Hence public consultations through participatory appraisal shall be mandatory for all projects requiring land acquisition, compensation and resettlement for the Water Supply and Sanitation Investment activities.

The aim of public consultations at this stage would be to:

- disseminate concepts for proposed projects with a view to provoke project interest amongst communities.
- determine communities' willingness to contribute in kind towards the implementation of the project.

## **5. GUIDING PRINCIPLES FOR THE VARIOUS TYPES OF LAND ACQUISITION MECHANISMS**

### **5.1 PREVIOUS AND CURRENT LAND ACQUISITION PRACTICE**

While the land acquisition practice may have had its merits, some landowners were disadvantaged and made poorer. Also, the vulnerable people were disadvantaged because they did not have a say in the land acquisition process. The situation was aggravated by lack of capacity on the part of landowner(s) or vulnerable groups to forward their grievances to those responsible, including the courts of law to address their grievances.

Currently in Kenya, there is growing awareness of the obligations on the part of project funding agencies, project implementers as well as the public and the government, particularly on the need for fair practices in land acquisition, payment of compensation and resettlement.

### **5.2 PROPOSED LAND ACQUISITION MECHANISM**

This Resettlement Policy Framework, for the proposed Water Supply and Sanitation activities advocates all measures to eliminate or minimize the impacts of physical and economic displacement of people. Therefore when the acquisition of land is required, the project shall:

- initially endeavor to utilise available freehold or public land,
- seek voluntarily donated land, sufficient for the purposes of the project,
- negotiate acquisition of land suitable for implementation of the project activities using agreed compensation plans and only as a last resort,
- acquire land through involuntary means following the provisions outlined in this RPF.

The local government authorities, the communities concerned and the PAPs shall be consulted, clearly explaining the purpose of the acquisition, the area of land required and the owner's right to resettlement and compensation without any economic or moral prejudice.

In the case of customary land, apart from implicating the local government authorities, the community leaders such as chiefs and a broad spectrum of the community, including youths and women should be party to any consensus to the acquisition of land and the modalities envisaged.

Whatever the consensus arrived at, the provisions of this RPF and the World Bank operational policy OP 4.12 shall be applied.

The institutional framework for application of this consensus or any litigation thereof is discussed further in this document.

In this regard the institution charged with piloting the land acquisition shall consign in a record:

- the land to be acquired,
- names of the owners and occupiers of that land as far as they can be ascertained; or in the case of customary land, the name of the land owner who is the holder of the right over the land as ascertained by the community,

- identify local community leaders/representatives to assist in the process of land acquisition,
- assess magnitude of impacts relative to the need for resettlement and/or compensation and valuation of assets to be compensated for,
- establish financial records showing the costs of relocation and compensation, the beneficiaries and indicating how these costs were arrived at.
- information on households or individuals eligible for relocation to their socio-economic standing (incomes, production material assets, debts etc) ,
- details of the relocation site(s) in response to the exigencies contained in table 2,
- details of resettlement after-care and assistance, where appropriate,
- available employment opportunities for the PAPs in the project activities.

These records shall be retained as annexes to the RAPs with copies detained by the local government authorities.

### 5.3 VOLUNTARY LAND CONTRIBUTION WITH COMPENSATION

Voluntary Land Contribution with Compensation refers to cases where individuals or community land owners agree to provide land for project-related activities, in return for negotiated compensation.

Note: Voluntary Land Contribution without Compensation is not recommended, because the experience has shown that opening up this venue either leads (i) to elitism or to (ii) forced contribution from the most vulnerable groups or persons. To avoid this elitism, abuses of vulnerable groups, and delays in projects, it is preferable to compensate all land acquisition for project activities.

### 5.4 INVOLUNTARY ACQUISITION OF LAND

Involuntary acquisition of land and assets thereon including resettlement of people, unless absolutely necessary, shall be avoided.

In particular, acquisition of sites of spiritual or cultural/historical significance should be discouraged.

Where involuntary land acquisition is unavoidable then it shall be minimized to the greatest extent possible.

The Displaced Persons shall participate throughout the various stages of the planning and implementation of the land acquisition, compensation and resettlement plans and processes. Prior to the preparation of the Resettlement Action Plans, the persons to be displaced shall be informed of the provisions of this Framework and their entitlements at public meetings.

The Lands Law Legislation sets out in detail, the procedures for the acquisition of customary land and freehold land by Government.

## **6. ELIGIBILITY CRITERIA AND CONDITIONS FOR DISPLACEMENT OF PROJECT AFFECTED PERSONS**

### 6.1 WORLD BANK CRITERIA FOR DETERMINING ELIGIBILITY FOR COMPENSATION

According to OP 4.12 of the World Bank, the criteria for determining eligibility for compensation, resettlement and rehabilitation assistance measures for persons to be displaced, shall be based on the following:

- a. Persons that have formal legal rights to land, including customary and traditional; and religious rights recognized under the laws of Kenya. This class of people includes those holding leasehold land, freehold land and land held within the family or passed on through generations.

- b. Persons who do not have formal legal rights to land or assets at the time the census begins; but have a recognized claim of use to such land or ownership of assets through the national and traditional laws of Kenya. This class of people includes those that come from outside the country and have been given land by the local dignitaries to settle, and/or to occupy.
- c. Persons who have no recognizable legal right or claim to the land they are occupying, using or getting their livelihood from. This class of people includes encroachers and illegal/bona fide occupants.

Affected persons classified under paragraph (a) and (b) shall be provided compensation, resettlement and rehabilitation assistance for the land, building or fixed assets on the land and buildings taken by the project. The compensation shall be in accordance with the provisions of this framework and if affected persons occupied the project area prior to the cut-off date (date of commencement of the Census).

Persons covered under sub-section (c) above are to be provided with resettlement assistance in lieu of compensation. In addition, they have to be given the necessary relocation assistance in conformity with the provisions of this policy framework provided the land was occupied prior to the established cut-off date.

All persons in the three sub-sections above are to be provided with compensation for loss of assets other than land. Consequently, this policy advocates for some kind of assistance to all affected persons, including illegal occupants/squatters and encroachers, that is, irrespective of whether they have formal titles, legal rights or not.

Communities including districts village communities' permanently losing land, resources and/or access to assets shall be eligible for compensation. Compensation to communities will include but not limited to, that for public toilets, market places, car parks and health posts. Compensation measures shall ensure that pre-resettlement socio-economic status of the communities are restored and maintained.

## 6.2 PROCEDURES FOR PAYMENT OF COMPENSATION

Compensation payment shall be made in the following ways:

- (a) By agreement between the Project and the PAPs or entities (individuals /households /communities):
  - the Project shall offer such sums deemed adequate as compensation to the entity who may accept that amount as compensation payable to it.
  - Such sums will be disbursed directly to the beneficiary entity with the relevant records of payments including the information stipulated in chapter 5 (land acquisition mechanism) consigned to the RAPs and the records of the appropriate local government authority.
- (b) By court order on the amount of compensation where this has been the subject of litigation between the Project and the Project Affected Entity.

## 6.3 KENYAN LEGISLATION ON COMPENSATION

Section 1 and Section 2 above provide the general basis for determining eligibility for compensation in accordance with the Land Law of Kenya (Land Acquisition and Compensation Act, State Lands Act and the current practice used by some government institutions. In general, cash compensations are paid based upon market value of the crops. The affected persons are, in some cases, entitled to new housing on authorized land under government housing. Under the customary law, land is given in compensation for land.

Shortfalls in the Legislation on resettlement and compensation in several countries throughout the world have been the reason for internationally funded projects to prefer such universally acceptable policies as those of the World Bank.

#### 6.4 CONDITIONS TO BE FOLLOWED IN DISPLACEMENT OF PEOPLE

Where displacement of people is unavoidable, the following conditions shall be followed:

- (a) The entitlement cut-off date shall be determined and agreed upon in consultation with the lower and higher local governments and all the stakeholders particularly the affected persons.
- (b) An assessment of the time likely to be needed to restore their living standards, income earning capacity and production levels shall be made.
- (c) The assessment shall ensure that the condition of the displaced persons shall be improved or at least maintained at least the levels prior to project implementation.
- (d) The displaced persons shall be provided with development assistance, in addition to compensation measures described above. These shall include assistance for land preparation, credit facilities, training for job opportunities, residential housing, or as required, agricultural sites for which a combination of productive potential, location advantages and other factors shall be at least equivalent to those of the old site.

### 7. NOTIFICATION, VALUATION PROCEDURES AND ENTITLEMENTS

#### 7.1 NOTIFICATION PROCEDURE

The Water Boards shall, by public notices in the daily newspapers and radio and television services, notify the public of its intention to acquire all or part of any land or use adjacent land earmarked for projects. A copy of such notice shall be served to each owner, occupier and person or agent having an interest in the land thereof. The names and addresses of the owners, occupiers and agents shall be readily ascertainable. The notice shall state: (i) The Project's proposal to acquire the land; (ii) The public purpose for which the land is wanted; (iii) That the proposal or plan may be inspected at the relevant Project Headquarters or the appropriate Water Board or WSP Administrative Offices; (iv) That any person affected may, by written notice, object to the transaction giving reasons for doing so, to the entities cited above within a period to be specified at the time of publication of the Notice.

#### 7.2 VALUATION FOR STATE OWNED LAND

The land asset types identified under Kenyan Law are:

- State Lands,
- Freehold,
- Leasehold,
- Lands under traditional or customary rights.

State owned land may be allocated free or sold on a commercial basis to individuals or communities by the Minister responsible for land administration. For cases where the state-owned land is being used by the public (for instance as settlements, for farming, for grazing or any other productive activity,) the individual or the community would be expected to pay compensation. Privately owned property, would have to be compensated for at the market value. The general guiding principle is that whoever was using the land to be acquired would be provided alternative land of equal size and quality.

#### 7.3 VALUATION FOR CUSTOMARY LAND

The Water and sanitation projects will often require the use of land under customary tenure for its project activities. In this case, valuation methods for the affected land and assets should conform to customary

laws and land assets would be valued and compensated for according to the following guidelines:

- the Communities would be compensated for assets and investments (including labor, crops, buildings, and other improvements) according to the provisions of the resettlement plan,
- compensation rates would be replacement costs as of the date that the replacement is to be provided.
- the market prices for cash crops would have to be determined and used,
- calculations for compensation would not be made after the cut-off date, in compliance with this policy,
- for community land held under customary law, the permanent loss of any such land will be covered by compensation in kind to the community.

#### 7.4 CALCULATIONS FOR COMPENSATION PAYMENTS AND RELATED CONSIDERATIONS

### **General Considerations**

#### **Computation of Compensation**

Where any land has been acquired under this Act, compensation shall only be payable in addition to the value of any improvement or works constructed on such lands:

- for the loss of rights over such lands in the case of land under customary tenure, and
- for the market value of such lands in the case of freehold land.

In estimating the compensation to be given for any land or any estate therein or the potential profits thereof, the following shall be taken into account:

- a) The value of such lands, estates or interests or profits at the time of the emission of the notice to acquire, and shall not take into account any improvements or works made or constructed thereafter on the lands,
- b) That part only of the lands belonging to any entity /person acquired under this Act without consideration for the enhancement of the value of the residue of the lands by reason of the proximity of any improvements or works to be made or constructed by the Project, and
- c) The value of the lands acquired for public purposes but also to the damage, if any, to be sustained by the owner by reason of the injurious effects of severance of such lands from other lands belonging to such owner or occupier.

For cash payments, compensation will be calculated in Kenyan currency adjusted for inflation. For compensation in kind, items such as land, houses, other buildings, building materials, seedlings, agricultural inputs and financial credits for equipment may be included. Assistance may include moving allowance, transportation and labor.

#### **Compensation for Land**

Compensation for land is aimed at providing for loss of crops and the labour used to cultivate the crop. Compensation relating to land will cover the market price of the land, the cost of the labour invested, as well as the replacement cost of the crop lost.

#### **Determination of Crop Compensation Rates**

Prevailing prices for cash crops would have to be determined. Each type of crop is to be compensated for, using the same rate. This rate should incorporate the value for the crop and the value for the labor to be invested in preparing new land.

#### **Compensation Rates for Labour**

The value of labor invested in preparing agricultural land will be compensated for at the average wage in the community for the same period of time. The labor cost for preparing replacement land is calculated on



what it would cost a farmer to create a replacement farmland.

### **Compensation for Buildings and Structures**

Compensation for buildings and other structures will be paid by replacement of these structures including fences, water and sanitation facilities etc. where part of the compensation is to be paid in cash the applicable replacement costs for construction materials will be used to calculate the values. Alternatively, compensation will be paid in-kind for the replacement cost without depreciation of the structure. The project will survey and update construction material prices on an on-going basis.

### **Compensation for Vegetable Gardens**

Vegetables are planted and harvested for daily use. Until a replacement garden can be harvested, the family displaced (economically or physically) as a result of the project will thereafter have to be compensated at the purchase prices of these items on the market.

### **Compensation for Horticultural, Floricultural and Fruit trees**

Given their significance to the local subsistence economy, fruit trees will be compensated on a combined replacement value. Fruit trees commonly used for commercial purposes in Kenya will be compensated at replacement value based on historical production statistics.

## **7.5 ENTITLEMENTS FOR COMPENSATION**

Entitlements for compensation shall be based on the eligibility criteria and the various categories of losses identified in the desk studies and field consultations. Unless otherwise indicated, payment of compensation and other entitlements and the extension of assistance will preferably be made to PAP households and not individuals.

In dealing with compensation, preference shall be given to land based resettlement strategies for Project Affected Persons whose livelihoods are land-based. Where sufficient land is not available at a reasonable price, non-land based options centered on opportunities for employment or self re-employment should be provided in addition to cash compensation for land and other assets lost. However this lack of land shall be documented and justified.

In addition to these entitlements, households who are found in difficult situations and are at greater risk of impoverishment (i.e. widowed household heads, households without employment, single parent households etc) as identified by the census will be provided with appropriate assistance by the project. Assistance may be in form of food, temporary accommodation, medical subsidy, employment referrals or priority employment in project activities. The assistance is meant to help them cope with the displacement caused by the project.

## **8. PROCEDURE FOR DELIVERY OF COMPENSATION**

Compensation and resettlement activities will be funded like any other project activity eligible under the Water Supply and Sanitation Funding would be processed and effected by the Water Boards preferably directly to beneficiaries in conformity with the RAPs:

### **8.1 CONSULTATION AND PUBLIC PARTICIPATION**

Consultation and public participation with the PAPs will initiate the compensation process. This consultation and public participation will be part of an on-going process that would have started at the planning stage, and would have continued through the conception, technical designs, land selection and screening stages. This trend will ensure that all affected individuals and households are well informed and adequately involved in the entire process.

## 8.2 NOTIFICATION OF LAND RESOURCE HOLDERS

Those who hold title to the land resources would be informed through the process in 7.1 above. Where there are clearly no identified owners or users, the respective local government administrations, lands offices and traditional leaders will be solicited to help identify owners or users and sensitize them on the project and its implications especially the cut-off dates. It is hoped, however that the media publications would be sufficient to avoid such eventuality.

## 8.3 DOCUMENTATION OF HOLDINGS AND ASSETS

The Water Boards or WSPs will be charged with all documentation related to the acquisition of land, the compensation and payment processes. These documents will serve as baseline data for resettlement monitoring.

## 8.4 Complaints and grievances mechanisms

### **Objections**

Prior to approval of any resettlement plans for the different investment projects, individuals and households already associated with the conception, design and location of the projects would have been in a position to express their dissatisfactions or grievances to the Water Boards and WSPs as well as the appropriate LG structures and attempt to resolve these in an amicable manner using traditional and customary avenues of conflict resolution. In pursuit of this same approach, grievances could be addressed through the various tiers of local government authority.

Where all these avenues for redress of grievances have been exhausted without arriving at an amicable solution or consensual decision, recourse can be had with the judicial institutions in place, namely the law courts. In this regard, the Project is obliged to provide, in particular to vulnerable and disadvantaged groups the requisite assistance enabling them to present their case to such decision-making organs of government.

## **9. RESETTLEMENT FUNDING**

### **Dispositions or Funding**

Funds for implementing inventory assessments as well as land acquisition and resettlement action plans will be provided by the Project. In general, the cost burden of compensation will be borne by the executing agencies such as government departments of state or the Project.

The estimate of the overall cost of resettlement and compensation would be determined during the socio-economic study. Disbursements based on budgetary requirements, established by the RAPs in consultation with PAPs/DPs and local chiefs, will be made by the Water Boards.

### **Estimated costs**

At this stage, it is not possible to estimate with accuracy the likely number of people who may be affected either through relocation, loss of assets or access to natural resources and services whichever this may be. This is because the technical designs and details have not yet been developed and the land needs have not yet been identified. When this information is available and after the conclusion of the site specific socio-economic study, information on specific impacts, individual and household incomes and numbers of affected people and other demographic data would be available. Such information will facilitate the preparation of a detailed and accurate budget for resettlement and compensation.

The consultant felt however prudent to make provisions for resettlement funding in the form of an

‘Advanced Lending Program’ (ALP) to cater for all issues relating to potential funding requirements for:

- Expertise required on an ad-hoc basis notably, Rural Sociologist, Population Specialist, Legal Expert on Resettlement and Valuation Expert, each for about 40 days annually at \$ 150/day-----  
-\$US 24,000,
- Relocation costs/compensation payments annually estimated at \$US 400,000/Boards- \$US 1,200,000

**Total for four (4) years-----\$US 4,800,000**

This advanced Lending Program is crucial as such ad-hoc or rather unforeseen expenditure, because of prevailing government regulations, procedures and budgetary constraints cannot be provided to the water boards to enable them to undertake these payments in a timely manner to expedite implementation of projects in accordance with the provisions of this RPF.

The Project will prepare the resettlement budget and will finance this budget through the administrative and financial management rules and manuals of the Water Boards.

## **10. INSTITUTIONAL ARRANGEMENTS**

The Water Boards shall adopt a project siting strategy that will ensure the least damage to the environment in conformity with the ESMF whilst at the same avoiding relocation of persons and their assets.

In this regard, the consultant is proposing that the siting of projects should be carried out by a structure that can address the issues of the environment and resettlement concomitantly.

Siting Boards or ad-hoc technical committees (TCs) should make every effort to ensure that no relocation of persons and their assets takes place.

It is proposed therefore that in all project sitings, the TCs shall co-opt where deemed necessary:

- a population specialist ( legal expert on displacement of peoples and laws on land tenure)
- a rural economist,
- a sociologist,
- a Valuation Expert.

It will work in close collaboration with the local population and organizations to ensure that the resettlement and compensation agreements signed by PAPs are executed in a timely manner and that the interests of the PAPs are protected.

NGOs may, where appropriate and necessary, be periodically engaged for the independent monitoring of the resettlement and compensation plans and shall report any deviations from the planned activities to the Water Boards. The NGO’s shall be responsible for funding their activities except for cases where a special contract agreement has been entered into with the project.

### **Public Consultation and Participation**

Public consultation and participation are essential because they afford potential PAPs the opportunity to contribute to both the design and implementation of the program activities. This reduces the likelihood for conflicts between and among PAPs and with the management of the Project.

In recognition of this, particular attention should be paid to public consultation with affected individuals, households and homesteads (including host communities) when resettlement and compensation concerns are involved.

As a matter of strategy, public consultation should be an on-going activity taking place throughout the entire project cycle. Hence, public consultation should take place during the:

- project conception and planning,

- screening process,
- socio-economic study,
- preparation of the development plans,
- resettlement and compensation planning,
- drafting and reading/signing of the compensation agreements,
- payment of compensations,
- resettlement activities and
- Implementation of post-project community support activities.

Public participation and consultation should take place through meetings with key community leaders, radio programs, request for written proposals/comments, completion of questionnaires, public readings and explanations of the project ideas and requirements.

## **11. IMPLEMENTATION PLANS**

### **Resettlement Action Plans**

The Water Board shall make sure that, following the census of PAPs, a comprehensive Resettlement Action Plan is prepared for each project activity that triggers resettlement and or issues arising from relocation of persons or assets. In this undertaking, Water Boards may, if need be contract the services of a valuation expert to carry out the evaluations of the assets of PAPs to be embodied in the RAPs. In case of involuntary resettlement, approval of the new land areas designated to be used for resettlement shall be sought from the Government in consultation with local communities.

The process of preparing the resettlement action plans, in line with the requirements of Section 5 above, will involve the following: -

- a census to be carried out to identify Displaced Persons
- the census will generate information about the Displaced Persons, their entitlements regarding compensation, resettlement and rehabilitation assistance as required,
- disturbances, especially those affecting income-earning activities families, should be properly recorded with the view to compensation or replacement in case of resettlement,
- based on the census and inventory of losses, and in consultation with the Displaced Persons, a time-phased action plan with a budget for provision of compensation, resettlement, and other assistance as required, shall be prepared.

To ensure transparency of procedures, Displaced Persons shall be informed of the method of valuation employed to assess their assets. All payments of Compensation, Resettlement Assistance and Rehabilitation Assistance, as the case may be, shall be made in the presence of the Displaced Persons in question and a witness, the local dignitaries for example.

## **12. MONITORING PLAN**

In order to assess whether the goals of the resettlement and compensation plan are met, a monitoring plan will be required. This monitoring plan will indicate parameters to be monitored, institute monitoring guidelines and provide resources including responsible persons or institutions, necessary to carry out the monitoring activities.

The arrangements for monitoring the resettlement and compensation activities would fit the overall monitoring programme of the entire Project which would fall under the overall responsibility of Water Boards. These will institute an administrative reporting system that:

- a) alerts project authorities to the necessity for land acquisition in the project activities design and

- technical specifications;
- b) provides timely information about the assets valuation and negotiation process;
  - c) reports any grievances that require resolution, and
  - d) documents timely completion of project resettlement obligations (i.e. payment of the agreed-upon);
  - e) updates the database with respect to changes that occur on the ground as resettlement and compensations activities are being implemented.

Annual Audits and Evaluations will be made in order to determine whether the PAPs have been paid in full before implementation of the individual project activities and, whether the PAPs enjoy the same or higher standards of living than before.

A number of objectively verifiable indicators shall be used to monitor the impacts of the compensation and resettlement activities. These indicators will be targeted at quantitatively measuring the physical and socio-economic status of the DPs, to determine and guide improvement in their social well-being. Therefore, monitoring indicators to be used for different RAPs or ARAPs will have to be developed to respond to specific site conditions.

Independent monitoring as for example by NGOs can be arranged from time to time to validate the program implementation.

**Table No. 1: Matrix for Evaluation of the Impacts of the Project**

<b>Water Boards, WSPs, LGIs</b>	1.3. PROJECT			
<b>Matrix for Evaluation of the Impacts of the Project</b>				
<b>A. Element</b>	<b>Yes</b>	<b>No</b>	<b>result</b>	<b>Mitigation and attenuation</b>
The Project does it entail; <ul style="list-style-type: none"> <li>j) the re-installation of populations,</li> <li>k) the loss of land,</li> <li>l) the loss of structures                             <ul style="list-style-type: none"> <li>• for housing,</li> <li>• for commercial use,</li> </ul> </li> <li>m) the loss of access to:                             <ul style="list-style-type: none"> <li>• natural resources,</li> <li>• health facilities,</li> <li>• water and sanitation</li> <li>• energy.</li> </ul> </li> <li>n) loss of revenue,</li> <li>o) any marginalisation</li> <li>p) increased morbidity</li> <li>q) disruption family an community values,</li> <li>r) disruption of socio-cultural or cult values</li> </ul>				

**Table No. 2: Potential Impacts at New Re-Installation Site**

Water Boards, WSPs and LGIs			Project	
Item.	yes	No	result	Mitigation/attenuation
1.Re-housing necessary ?				
2.What persons are affected ?				
3. Are there any loss of agricultural land, parks, loss of trees.				
4. Is the new site difficult to access or subject to inundation?				
5. Does the new site improve mobility of the populations?				
6. Is solid waste generated? Is there an appropriate disposal site?				
7. Is liquid waste generated? Is there an appropriate disposal system?				
8. Is there an adequate sanitation system in place?				
9. Is any soil erosion likely to occur? Are the drainage systems adequate?				
10. Are groundwater resources likely to be polluted?				
11. Is their likelihood of negative impacts on the health of the displaced persons?				
12. Is there a plan for the maintenance of the site?				

**Table No. 3: Specimen Entitlement Matrix**

CATEGORY OF PAP	TYPE OF LOSS	ENTITLEMENTS				
		Compensation for Loss of Structures	Compensation for Loss of Assets	Compensation for Loss of Income	Moving Allowance	Other Assistance
Property Owners	Loss of land	–	Land replacement at new site, plus land clearing by project	Crops at market cost in scarce season	None	Food Aid during construction of new site
	Loss of structure Residential for business	Compensation at full replacement value not depreciated	Fences (wire or wood) at \$ 3/meter Hand-dug wells at \$200	For lost rental income Lump sum cash payment of 6 months rent per tenant	Moving to be done free by project	Disturbance Allowance
Residential Tenant	Loss of rental accommodation	No loss of structure, no entitlement to housing at new site	Replacement cost for non-movables if installation was agreed with owner	No loss of income	Free relocation if notification before cut-off date	6 months rent equivalent for disturbance
Business Tenant	Loss of premises	No loss	Replacement cost for facilities that cannot be moved	For loss of business income, payment of half of turnover for 6 months	Free relocation if notification before cut-off date	
Encroachers (using land)	Loss of land	–	Relocation to resettlement site of choice, with payment of rental fee for land. For crops, fences and wells, as above for owners	–	–	Food Aid during preparation construction of new site



Bona fide/illegal occupants (living on site)	Loss of shelter	Compensation at full replacement value for structure, relocation to resettlement site, with payment of site rent until relocation completed	None	Payments in lieu of wages while rebuilding		Disturbance Allowance

## ANNEXES

### ANNEX 1: INDICATIVE TABLE FOR PRICES USED TO COMPENSATE FOR LOSS OF TREES

Type of plant or tree	New/Small (0-1 years old) US\$	Medium (1-5 years old) US\$	Large (above 5 years old) US\$
Mango Tree	15	30	30
Papaya Tree	1	7	7
Orange Tree	20	35	35
Lemon Tree	15	30	30
Banana Tree	2	10	10
Coconut Palm	15	30	50
Eucalyptus	10	20	50
Guava Tree	5	20	20
Cashew Tree	10	40	40

### ANNEX 2: MAIN CONTENTS OF THE RESETTLEMENT ACTION PLAN

- Description of the project
- Potential impacts
- Objectives
- Socio-economic studies
- Legal framework
- Institutional framework
- Eligibility
- Valuation and compensation for losses
- Resettlement measures
- Site selection, site preparation and relocation
- Housing infrastructure and social services
- Environmental protection and management
- Community participation
- Integration with host population
- Grievance procedures
- Organizational responsibilities
- Implementation schedule
- Cost and budget
- Monitoring and evaluation

### ANNEX 3: CONTENTS FOR ABBREVIATED RESETTLEMENT ACTION PLAN

- Census of displaced persons and valuation of assets.
- Description of compensation and other resettlement assistance to be provided.
- Consultations with displaced people about acceptable alternatives
- Institutional responsibility for implementation and procedures for grievance redress.
- Arrangements for monitoring and implementation and,
- A timetable and budget

## ANNEX 4: TERMS OF REFERENCE

### Resettlement Policy Framework (combined with TOR for ESMF)

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